

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHARLES ROGERS,

Petitioner,

Case No. 05-C-1218

-vs-

GARY R. McCUAUGHTRY,

Respondent.

DECISION AND ORDER

Previously, the Court dismissed this petition under 28 U.S.C. § 2254 for lack of jurisdiction as a successive petition. The Court also denied a motion for reconsideration. Now before the Court is Charles Rogers' ("Rogers") request to transfer this matter to the Seventh Circuit Court of Appeals pursuant to 28 U.S.C. § 1631.

Section 1631 provides:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, *if it is in the interest of justice*, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred. (emphasis added).

Rogers requests a transfer to the Seventh Circuit so the court of appeals can consider whether to authorize his successive petition. *See* 28 U.S.C. 2244(b)(2), (3)(A). However, Rogers was

convicted in 1989. While Rogers has filed numerous post-conviction motions in state and federal court, the age of his conviction suggests that his petition is time-barred. Accordingly, a transfer is not in the interests of justice, and Rogers' motion is denied. *See Phillips v. Seiter*, 173 F.3d 609, 610-11 (7th Cir. 1999) (even though the court lacks jurisdiction, it may "take a peek at the merits, since whether or not the suit has any possible merit bears significantly on whether the court should transfer or dismiss it").

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Rogers' request for transfer [Docket No. 18] is **DENIED**.

Dated at Milwaukee, Wisconsin, this 14th day of March, 2007.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge